

**THE COMPENSATION ALLOWED WHOLESALERS  
FOR AFFIXING TAX STAMPS TO  
TOBACCO PRODUCTS**

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**REPORT OF THE  
VIRGINIA ADVISORY LEGISLATIVE COUNCIL  
To  
THE GOVERNOR  
And  
THE GENERAL ASSEMBLY OF VIRGINIA**



HO. 13, 1972

COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply  
Richmond  
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UNDERScoreD FOR RAPID READING

THE COMPENSATION ALLOWED WHOLESALERS FOR AFFIXING  
TAX STAMPS TO TOBACCO PRODUCTS

Report of the

Virginia Advisory Legislative Council

to

The Governor and The General Assembly of Virginia

Richmond, Virginia  
January 4, 1972

To: HONORABLE LINWOOD HOLTON, *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

I. INTRODUCTION

The law of Virginia requires that as evidence that the excise tax provided for by § 58-757.1 has been paid a stamp shall be affixed as provided by law. The responsibility of affixing such stamps is delegated to tobacco wholesalers who are allowed a discount on the amount of the tax in order to provide compensation for the service which they perform. In response to allegations that the amount of the discount is often insufficient reimbursement, the General Assembly directed the Virginia Advisory Legislative Council to study the matter. The text of the study directive, House Joint Resolution No. 27, is as follows:

Whereas, Chapter 14.2 of Title 58 of the Code of Virginia provides for taxes levied on tobacco products; and

Whereas, § 58-757.8 of the Code of Virginia directs the Department of Taxation to prepare and sell stamps denoting the tax on tobacco products and provides for the purchase of such stamps by wholesale dealers as defined in § 58-757.10 of the Code and provides for a discount of five per centum on such sales; and

Whereas, the purpose of such discount is to compensate the wholesaler for the expense involved in the purchase, handling and affixing of such stamps; and

Whereas, the discount of five per centum allowed in this State is the lowest allowed in any state having similar laws; and

Whereas, it has been represented that the five per centum discount allowed in this State is not sufficient to compensate the wholesaler for the expense involved in collecting taxes for the Commonwealth of Virginia; be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to make a study and report on the discount allowed to wholesalers on the sale of tobacco tax stamps with a view toward fairly and adequately compensating the

wholesaler for the expense involved in the purchasing, handling and affixing of such stamps. The Council shall conduct its study and report its findings and recommendations to the Governor and the General Assembly not later than December one, nineteen hundred seventy-one.

Pursuant to this Resolution, the Council selected Edward E. Lane, of Richmond, one of its members, to serve as Chairman of the Committee to make the initial study and report. The following were selected to serve on the Committee with Mr. Lane: Jack G. Bess, Roanoke; C. W. Cleaton, South Hill; W. W. Estes, South Hill; William R. Hill, Jr., Richmond; J. L. Kantor, Norfolk; Andrew K. Leake, Richmond; R. J. Myers, Warrenton; E. B. Pendleton, Richmond; Charles H. Reed, Richmond; Wayland W. Rennie, Richmond; Thomas E. Sheppard, Richmond; H. M. Tanner, LaCrosse; Joseph B. Whitley, Richmond.

The Virginia Advisory Legislative Council and the Division of Statutory Research and Drafting made staff and facilities available to carry out this study, Laurens Sartoris being assigned as counsel to assist the members and the study committee.

Representatives of the Virginia Wholesalers and Distributors Association, the Tobacco Tax Council and the Department of Taxation were heard. There was unanimity among these as to the financial burden placed on many wholesalers by the present system of reimbursement for the affixing of tax stamps. After due deliberation and research the Council now makes its report.

## II. RECOMMENDATIONS

A. Compensation provided for the affixing of stamps to tobacco products should not be based on the amount of tax collected. The present system creates a chance situation in which wholesalers stand to either profit or lose according to the amount of tobacco products sold. The amount of one dollar and fifty cents (\$1.50 per case of cigarettes stamped is a reasonable amount of compensation.

B. The Department of Taxation should provide additional locations at which tobacco stamps may be purchased in order to make the stamps more readily available to wholesalers in rural or remote areas.

## III. REASONS FOR RECOMMENDATIONS

The amount of the tax represented by tobacco tax stamps, provided for by § 757.8 of the Code, is one and one-half mills per cigarette as prescribed in § 58-757.1:1. Otherwise stated the tax amounts to two and one half cents (\$.025) per pack of twenty cigarettes; twenty-five cents (\$.25) per carton of ten packs of cigarettes or fifteen dollars (\$15.00) per case of sixty cartons of cigarettes.

The means of compensating the wholesaler for affixing the stamps is also provided in § 58-757.8. A five percent discount is allowed thereby on the amount of tax represented by the stamps, which is seventy-five cents (\$.75) per case of cigarettes. Formerly the tax on a case of cigarettes was eighteen dollars (\$18.00), which based on the five percent discount, provided ninety cents (\$.90) compensation per case of cigarettes. As can be seen, the wholesaler now receives less compensation for the affixing of stamps than prior to 1966 when the current tax rate was established.

We realize that expensive equipment, labor and warehousing are required to affix the tax stamps. This realization is all the more poignantly apparent at a time in which all costs have risen so drastically. Based on investigation we find that in a majority of instances wholesalers are suffering a financial loss as a result of being required to affix the stamps. A small number of wholesalers, who handle large quantities of tobacco products (in excess of 10,000 cases per

year), are able to realize a small profit from performing the service for the State.

In examining the amount of the discount allowed in other nearby jurisdictions, the following was learned:

<u>Maryland</u>	<u>\$1.80</u> per case
<u>Delaware</u>	<u>\$2.31</u> per case
<u>North Carolina</u>	<u>\$1.75</u> per case
<u>Tennessee</u>	<u>\$2.57</u> per case
<u>Kentucky</u>	<u>\$1.08</u> per case
<u>West Virginia</u>	<u>\$2.88</u> per case
<u>Washington, D. C.</u>	<u>\$1.44</u> per case

Clearly, Virginia is far below the average of these in allowing reasonable compensation.

In consideration of the foregoing it appears justified for the amount allowed the wholesaler to be raised to one dollar and fifty cents per case (\$1.50) of cigarettes stamped. This amount will allow an adequate compensation to satisfy the needs of all but a few wholesalers in the Commonwealth.

In order to allow for compensation of one dollar and fifty cents (\$1.50) per case of cigarettes two options are available; raise the amount of the discount to ten percent of the amount of the present tax or specify an amount of compensation per case as a fee for service without relation to the amount of the tax. The latter of these solutions is reasoned to be better. By divorcing the amount of compensation from the amount of the tax, wholesalers will be subjected no longer to a raising or lowering of their receipts subject to the amount of tax levied, thus in some instances under compensating and in others over compensating. The General Assembly then may enact appropriate legislation, and determine, from time to time, the amount of adequate compensation to be paid, without the necessity of considering the tax being collected.

B. A complaint voiced by wholesalers from rural and remote regions in the State is the problem of travelling to distribution points or having to rely on the mails to secure tobacco tax stamps. In the former case the wholesaler must expend time and energy and in the latter he must pay the cost of postage and as a certificate to the Department of Taxation must accompany his order, and the mails are generally inefficient, the length of time during which he extends his credit to the Commonwealth is increased.

It is felt that the Department of Taxation should endeavor to establish additional distribution locations to facilitate the acquisition of tobacco tax stamps, possibly in its regional offices throughout the State.

#### IV. CONCLUSION

The Council wishes to express its sincere appreciation to the members of the Committee. These gentlemen gave unselfishly of their time and talents in working toward a solution to the problems of this study.

The need for reform in the present system of compensation to wholesalers for affixing stamps to tobacco products has been recognized. Included with this report is a draft of a suggested amendment to § 58-757.8 of the Code of Virginia. The changes therein provide for a fixed amount of compensation, divorced from the amount of the tax, more adequate than that which is currently allowed. The enactment of this bill is urged.

Also the lack of a sufficient number of distribution points for tobacco tax stamps has been recognized. It is hoped that the Department of Taxation will endeavor to make tobacco tax stamps more accessible to wholesalers in order to relieve hardship which results from the limited manner in which distribution is made currently.

Respectfully submitted,

ROBERT C. FITZGERALD, *Chairman*

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A B I L L

To amend and reenact § 58-757.8 of the Code of Virginia, relating to the preparation and sale of tobacco tax stamps; the unlawful sale thereof and penalties therefor; discount allowed for purchase.

Be it enacted by the General Assembly of Virginia:

1. That § 58-757.8 of the Code of Virginia be amended and reenacted as follows:

**§ 58-757.8. Preparation and sale of stamps; unlawful sale of stamps a felony.**—The Department of Taxation is hereby authorized and directed to have prepared and to sell stamps suitable for denoting the tax on all articles enumerated herein. Any person, firm, corporation, or association of persons, other than the Department of Taxation, who sells tobacco tax stamps, not affixed to tobacco sold and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a felony and punishable as set out in § 58-757.14. When wholesalers have qualified as such with the Department of Taxation, as provided in § 58-757.10, and desire to purchase stamps as prescribed herein for use on taxable tobaccos sold and delivered by them, the Department of Taxation shall allow on such sales of tobacco tax stamps a discount of ~~five percent~~ one dollar and fifty cents (\$1.50) per case; however, no reimbursement shall be allowed for the stamping of less than a case. As used herein, "case" shall mean sixty (60) cartons of cigarettes each containing ten (10) packs of cigarettes, each containing twenty (20) cigarettes.

